

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementing a Nationwide, Broadband,)	PS Docket No. 06-229
Interoperable Public Safety Network in the 700)	DA 09-1819
MHz Band)	

COMMENTS by CITY OF BOSTON
ON
PETITIONS FOR WAIVER TO DEPLOY 700 MHZ PUBLIC SAFETY
BROADBAND NETWORK

Respectfully Submitted on Behalf of
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COMMENTS by CITY OF BOSTON

The City of Boston respectfully submits the following comments in response to the Commission's questions outlined in Appendix A of its Public Notice referenced herein above. We also are pleased to include a statement from Boston Police Commissioner Edward F. Davis on matters relevant to Boston's waiver petition.

Timing

The Commission should act on these petitions prior to completing action on the rulemaking itself. Adoption of waiver conditions that require petitioners to conform networks, deployed under waiver, to subsequently issued Commission requirements should insure that issues are not prejudged and that the urgent needs of public safety are addressed by those petitioners ready and able to implement early build-outs. The Commission should make appropriate determinations of petitioners reasonable ability to guarantee those waiver conditions.

In addition to the public interest being served by waivers permitting early build-out to address the urgent needs of public safety agencies, prompt action to grant waivers will permit petitioners to apply for and leverage potential Broadband Technology Opportunity Program (BTOP) funding to supplement capital budgets and facilitate the most expeditious possible completion of networks.

Authority to Operate.

As indicated in the Public Notice, the Commission already licensed the public safety spectrum to the Public Safety Spectrum Trust (PSST) so the FCC has the authority to authorize PSST to "sublicense" or enter into other types of arrangements, such as a lease, with qualified individual public safety jurisdictions for access to and use of the

spectrum once the waivers are granted. We recommend that the Commission provide rules, terms and conditions to make the sublicensing and leasing agreement functional.

We agree with Bay Area Cities and New York that sub-licensees should have all rights, privileges, and responsibilities of the direct licensee for the spectrum (the PSST). Such licensing or leasing agreements should be for non-revenue public safety purposes and must be long term in nature as such guarantees can help secure public funding to build, operate, upgrade and eventually integrate their respective systems into the future regional and national public safety network. Such agreements must stipulate minimum requirements for interoperability, technical standards, operational governance, monitoring and enforcement mechanisms. Once again, absent a major and or a material breach, such arrangement should not be revocable by the Commission or PSST.

Existing Early Build-out Rules

The current early build-out rules are premised on the existence of a D Block licensee. In the absence of such licensee, these rules are deeply constraining and it is difficult for a waiver petitioner to discern how these rules would apply and affect its jurisdiction, which should be factored into the Commission's pending waiver review.

Boston's waiver petition addresses the conditions and measures that are needed to ensure that early build-outs will be integrated with a future national network or regional networks.

Boston recommends that any relief must be conditioned to ensure current and future interoperability with national and regional networks. Petitioners who are granted relief under these conditions would incur the cost to implement any future features and this would not be dissimilar to current practice which requires public safety entities to

incur costs of upgrading and integrating their current Land Mobile Radio systems to insure interoperability within their geographic region.

Sufficiency of Pleading.

It is not unreasonable for the FCC to require certain basic, minimum threshold information addressing key aspects of early build-outs from the wavier petitioners, such as committed funding sources, preliminary designs and build-out plans. Boston believes information supplied in its waiver petition is an example of the type of information that meets that basic threshold standard.

Interoperability

The City of Boston endorses all the elements outlined in Appendix A, Section 6, of the Request for Comment. Taken together, these elements form a common technical standard and practice. To ensure interoperability, the Commission must require minimum interoperability and technical standards, as updated and revised from time to time.

By monitoring early build-out activities, the Commission can make use of best practices and lessons learned from the early build-outs and incorporate those lessons learned into its broader rulemaking process. This will assist the Commission in developing more effective rules and regulations for regional and national interoperability.

Interoperability requirements should be flexible as technical standards and operational requirements are still evolving. The Commission's waiver requirements should be forward looking and flexible enough to support these maturing technical specifications and operational requirements.

Enforcement

To ensure adherence to adopted conditions, the Commission could reasonably require successful waiver petitioners to provide the Commission with periodic reports verifying adherence to those adopted conditions. This will permit the Commission to further investigate and, if required, enforce adherence under the Commission's inherent enforcement authority.

The Commission should establish basic ground rules and waiver conditions that are substantially identical for all waiver petitioners, such as licensing terms, technical standards, and requirements for interoperability and integration. There may be the need for additional waiver conditions to be attached to individual petitioners to accommodate different jurisdictional conditions.

Boston cannot envision a circumstance in which the Commission's decision to invalidate or take enforcement action against one waiver recipient would affect the continuing validity of relief granted to other waiver recipients.

Permissible Users

Boston believes all the potential users of its proposed network as set forth in Boston's waiver petition are appropriate and permissible under Section 337.

Flow Mobile and North Dakota Petitions

Without specific knowledge of individual geographic areas and available spectrum resources, Boston does not believe national reallocation of narrowband channels is in the best interests of public safety. If a portion of the 700MHz "Narrowband" spectrum is re-allocated for broadband use it is absolutely essential that no established and/or proposed National Interoperability Channels be re-allocated.

STATEMENT OF EDWARD F. DAVIS, POLICE COMMISSIONER

I respectfully submit this statement in response to the Commission's *Public Notice* in the above-captioned proceedings regarding pending petitions for waivers to deploy 700 MHz public safety broadband systems.¹ The City of Boston filed an amended request for waiver to enable it to deploy an interoperable public safety wireless broadband network in the 700 MHz public safety broadband allocation of 763 MHz – 768 MHz and 793 MHz – 798 MHz, and is one of the petitioners referenced in the Public Notice.² The Boston PD is filing this statement in support specifically of the City of Boston waiver and in general the other waiver requests, subject to the conditions noted herein, and we urge the Commission to quickly grant these waivers in the current broadband spectrum licensed to the Public Safety Broadband Licensee (PSBL) as designated above. The Boston PD, however, strongly opposes any proposal to divert 700 MHz public safety narrowband spectrum for broadband use, as petitioned by one of the waiver petitioners. We fully support the recent statement addressing the continued need for the narrowband spectrum submitted by the International Association of Chiefs of Police (IACP).³

As noted in Boston's waiver request, we are committed to employ state of the art technology to deploy and participate in a highly robust and interoperable public safety wireless broadband network (Boston Network) that will not only serve the first

¹ Public Notice DA 09-1819 in PS Docket No. 06-229, released August 14, 2009

² Amended Request for Waiver, PS Docket No. 06-229, filed May 28, 2009, and Erratum filed June 19, 2009. The Amended Waiver supersedes and completely replaces the Initial Waiver request filed on December 11, 2008.

³ Letter, with attached White Paper entitled "Wireless Broadband is Not an Alternative to LMR Mission Critical Voice Systems", by Harlin McEwen, Chairman, IACP Communications and Technology Committee, dated October 12, 2009, to the FCC Chairman Julius Genachowski.

responders in Boston but also can be shared across the Metro Boston Homeland Security region. Further, Boston agreed to ensure that the Boston Network will be capable of being integrated into any national or regional network that may subsequently be developed under the Commission's rules. Since Boston filed the waiver request in May, the Association of Public-Safety Communications Officials-International, Inc. (APCO), the National Public Safety Communications Council (NPSTC), and the Public Safety Spectrum Trust (PSST) – currently the nationwide PSBL – have endorsed Long Term Evolution (LTE) 4G technology as the broadband interoperability technology to be employed by all entities deploying a broadband system in the 700 MHz public safety broadband spectrum. The City of Boston has agreed to comply with this technology decision in its waiver request, as well as any other conditions set forth by the Commission, to ensure interoperability across these regional and nationwide public safety broadband networks. At the same time, grant of the requested waiver will allow Boston to deploy a broadband system that meets our specific operational requirements.

Two other significant developments have taken place since Boston filed the waiver request in May:

1. The major public safety associations, including APCO, NPSTC, IACP, International Association of Fire Chiefs (IAFC), the PSST, and others, agreed to petition Congress and the Commission to reallocate the D Block spectrum to public safety. This initiative is now being lead in Congress by the Major Cities Chiefs (MCC) and their members.
2. One of the waiver petitioners, North Dakota, proposed that the Commission allow use of the 700 MHz public safety narrowband channels for their broadband

system, in addition to the current 700 MHz public safety broadband allocation. In addition, some members of Congress and Commission staff, under the misconception that broadband systems will be an alternative to mission critical voice systems within two to three years, are beginning to consider use of the narrowband spectrum for broadband use, rather than reallocate the D Block to public safety.

Boston PD supports the allocation of 10+10 MHz of broadband spectrum for public safety, including the 5+5 MHz currently licensed to the PSBL and the 5+5 MHz D block spectrum. Therefore, we encourage the Commission to support public safety leadership efforts and work with Congressional leadership to reallocate the D Block (758-763 MHz and 788-793 MHz) to public safety as soon as possible, and add this spectrum to the PSBL on a nationwide basis. This additional spectrum would benefit public safety in implementing the anticipated applications and services, especially video applications, which will require higher spectrum capacity as the network capability expands. Boston defined in its waiver request how our 700 MHz broadband network will expand in both users, from traditional first responders to other allowable government departments and to other jurisdictions in the greater Boston area. Enabling the broadband system to grow requires spectrum foresight and planning. Boston PD recognizes that the reallocation of the D Block will take some time, and we cannot wait until then to have our waiver request approved by the Commission. We therefore urge the Commission to grant the waiver request initially on the 700 MHz public safety broadband spectrum to allow us to start implementation of the Boston Network in time for Boston to apply for Stimulus funding, as noted in our waiver request. If Congress and the Commission heed the

requests of public safety organizations and reallocate the D block to public safety, we request the Commission add that spectrum to Boston's waiver authorization at that time.

Of significant concern to the Boston PD is an apparent growing misconception by some in Congress and the Commission that in two or three years wireless broadband will be an alternative to Land Mobile Radio mission critical voice systems. It appears that such a misconception is fueling the idea to divert much needed 700 MHz public safety narrowband spectrum (769-775 MHz and 799-805 MHz) to public safety broadband networks, either on a mandated or optional basis. As noted by Harlin McEwen, Chairman of the IACP Communications and Technology Committee and Chairman of the PSST, in recent separate filings to the Commission Chairman and Deputy Chief of the PSHS Bureau, there are many technical and operational impediments that must first be overcome, and as a result will require many years, if ever, for broadband to replace mission critical voice systems.⁴ Just as importantly, Mr. McEwen emphasized that allowing such use of the narrowband spectrum for broadband operations will have serious operational and monetary consequences for public safety agencies, as many have spent millions to deploy mission critical voice systems in the 700 MHz narrowband spectrum and many more agencies are planning deployments. In dense population centers such as the greater Boston area, we have been waiting over 10 years to have access to the much needed 700 MHz narrowband channels. Boston PD and many other area public safety entities have been actively involved to finally get legislation that mandated the June 12, 2009 DTV transition date. We cannot now face another possibly insurmountable hurdle

⁴ Letter by Harlin McEwen, Chairman, Public Safety Spectrum Trust, dated October 1, 2009, to Ms. Jennifer A. Manner, Deputy Chief, Public Safety and Homeland Security Bureau. And October 12, 2009 Harlin McEwen letter to FCC Chairman Julius Genachowski (see footnote 3).

of having to choose between expanding the capabilities of our mission critical voice systems in the finally available 700 MHz narrowband spectrum, and being able to implement the high speed data and video applications planned in our 700 MHz broadband network. Further, public safety agencies in neighboring jurisdictions or a private/public partnership should not be allowed to deploy a broadband system on the narrowband channels. Doing so could prevent agencies in adjacent states, regions or jurisdictions from implementing mission critical voice systems. Finally, as noted by APCO in their Comments to this Public Notice, under no circumstances can the Commission allow broadband communications to “pave over” the 700 MHz interoperability channels.⁵ Because LTE broadband channels will be 5 MHz wide and narrowband interoperability channels are spaced throughout the 700 MHz narrowband channel plan, any deployment of broadband systems in the narrowband spectrum will wipe out all access for 700 MHz narrowband interoperability in that broadband use area, plus a buffer area around such use. Therefore, Boston PD strongly urges the Commission not to allow any diversion of 700 MHz public safety narrowband spectrum for broadband systems, as petitioned by one of the waiver petitioners, or as being suggested by some in Congress.

In the waiver request, Boston also detailed our funding and deployment plans, argued the benefits of a 700 MHz broadband network, and defined the need for the Commission to act at once and approve this waiver request. In conclusion, Boston PD urges the Commission to grant the Boston waiver request, as well as other waiver requests for use of the PSBL broadband spectrum, as quickly as possible. Further, we

⁵ Comments of APCO, page 14, PS Docket No. 06-229, dated September 22, 2009.

support the reallocation of the D Block to public safety, but object to any diversion of the 700 MHz public safety narrowband spectrum for broadband use. We urge the Commission to research and recognize the serious detrimental consequences such a decision can have on mission critical voice communications.